A

Qiu Hangyu v Hai Di Lao Malaysia Sdn Bhd

B

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCVC-505–09 OF 2022
AHMAD SHAHRIR J
1 NOVEMBER 2025

C

Contract — Breach — Contract of employment — Fixed-term contract of service — Whether there was repudiatory breach — Liquidated damages clause in employment contract requiring salary payment per month for unexpired term upon termination — Whether plaintiff could claim for unexpired term of fixed-term contract of service

D

Evidence — Documentary evidence — Certificate — Admissibility of employment contract — Whether authority to execute certificate questionable — Whether employment contracts fell outside scope of s 90A of the Evidence Act 1950 ('the EA') — Whether s 90A(6) of the EA served as alternative proof mechanism for documents under s 90A(1) of the EA — Whether documents inadmissible

E

Civil Procedure — Pleadings — Facts not pleaded — Whether court entitled to decide on matter not pleaded — Whether parties barred from adducing evidence of unpleaded facts — Whether there was procedural failure

F

Civil Procedure — Jurisdiction — Courts — Repudiatory breach of employment contract — Whether matter within purview of Industrial Court — Whether claim fell within contractual damages rather than compensation for dismissal — Whether civil court had jurisdiction to hear matter

G

The plaintiff commenced her career with Haidilao Hot Pot operations in China in 2015 under the employment of Haihongda (Beijing) Catering Management Co Ltd. In August 2020, she was reassigned to Malaysia under the defendant's employment. The parties executed a fixed-term contract of service ('the contract') whereby the plaintiff was appointed as the Business Manager — Asia Pacific for a term of five years. The plaintiff's monthly salary was RM30,000. The contract contained an agreed liquidated damages clause requiring payment of RM30,000 per month for the unexpired term upon termination by either party with one month's notice. Sometime in early April 2022, the defendant's Regional Manager, Mr Zhou Shaohua ('Mr Zhou'), approached the plaintiff and demanded that she immediately relinquish her

H

I

managerial position. He instructed her not to report for work the following day pending new work arrangements. The following day, the plaintiff completed the handover process, signed a handover form and surrendered it to the replacement branch manager, Ms Zhang Qingwang. In July 2022, the plaintiff discovered that the defendant had ceased paying her full salary for June and July 2022. Therefore, the plaintiff emailed Mr Zhou seeking clarification on her work arrangements. On the same day, Mr Zhou replied, apologising and admitting to an oversight in arranging her work placement. Mr Zhou then offered the plaintiff a position as junior assistant, which was rejected by the plaintiff via email. When she received no further reply, the plaintiff sent further emails demanding clear instructions giving express notice that the defendant's conduct had terminated the contract. Since the defendant did not respond, the plaintiff commenced the present action claiming substantial damages for the defendant's repudiatory breach of a fixed-term contract of service, on the allegation that the plaintiff was entitled to claim the unexpired term of the fixed-term contract of service. The defendant, on the contrary, denied any breach and contended that the plaintiff abandoned her employment. During proceedings, the defendant sought to rely on three documents classified as Part C, namely: (a) a purported second fixed-term contract for one year; (b) a promissory note; and (c) a transfer notice. The defendant produced a certificate under s 90A of the Evidence Act 1950 ('the EA') through one Mr Wong Jia Neng ('Mr Wong'), the legal counsel of the defendant's parent company in Singapore, in an attempt to convert and reclassify these documents from Part C to Part B. The defendant further contended that the present action amounted to an abuse of process, arguing that the plaintiff's claim was, in substance, one for constructive dismissal falling within the exclusive jurisdiction of the Industrial Court under s 20(1) of the Industrial Relations Act 1967, primarily relying on the Court of Appeal decision in *7-Eleven Malaysia Sdn Bhd v Ashvine Hari Krishnan* [2023] 3 MLJ 469.

Held, allowing the plaintiff's claim with costs:

(1) The defendant's reliance on *7-Eleven Malaysia* was misplaced. The court in *7-Eleven Malaysia* clarified that employment related claims may be maintained before the civil courts as distinguished from the Industrial Court: (a) if the claim consisted of purely contractual entitlement arising from express terms of the contract of employment; (b) if the claim related to a contractual entitlement which would have crystallised regardless of the dismissal; (c) if the claim sought to enforce contractual rights and not compensation for loss of employment; and (d) the relief sought was not compensation for loss of employment but for rights that accrued or would have accrued under the contract of employment. In the present case, the plaintiff sought specific contractual entitlements including liquidated damages under an express provision of the contract and not compensation for wrongful dismissal. As such, it was clear that the

present claim fell squarely within this principle as it sought contractual damages rather than compensation for dismissal (see paras 16 & 18).

(2) Employment contracts were word-processed documents representing typed input rather than processed computational output. They, therefore, fell outside the scope of s 90A of the EA. Even if the disputed documents qualified as computer-generated documents, Mr Wong's authority to execute the certificate was highly questionable. Section 90A(2) of the EA required that the certificate be executed by a person responsible for the management of the computer's operation or conduct of activities for which the computer was used. Mr Wong was employed by Singapore Super Hi Dining Pte Ltd, the defendant's parent company, and not by the defendant itself. This raised concerns regarding his authority to certify documents produced by the defendant's computer systems. The statutory requirement demanded responsibility over the specific computer used by the party tendering the documents (see paras 23–24).

(3) Section 90A(6) of the EA could not serve as an alternative proof mechanism for documents under s 90A(1) of the EA. It operated only as a deeming provision for documents outside the ordinary course of computer use. The defendant's conflation of these provisions was misguided. Section 90C of the EA expressly provided that ss 90A and 90B prevailed over all other provisions of the EA making s 90A the exclusive gateway for admitting documents produced by computers. Accordingly, the disputed documents remained inadmissible and retained their Part C status (see paras 26–27).

(4) The defendant sought to rely on a promissory note but the facts relating to this were not pleaded in the defence. It was trite that the court was not entitled to decide a case on a matter which was not pleaded and that the trial must be confined to the pleadings. It followed that parties were barred from adducing evidence of unpleaded facts during trial. As a consequence, the promissory note was to be excluded from consideration without the need to examine its authenticity as it reflected a clear procedural failure by the defendant (see paras 28–29).

(5) Employment contracts were required for employment pass applications. The chronology was compelling. The original contract was executed on 1 August 2020 with employment pass approval granted on 14 August 2020. The disputed second contract was dated 9 August 2021 with employment pass approval granted on 20 August 2021. While the disputed documents remained inadmissible under s 90A of the EA or non-compliance, the second fixed-term contract was valid. This finding rests primarily on the binding admission in the statement of agreed facts reinforced by the business necessity arising from employment pass requirements (see paras 33 & 36).

(6) The defendant's conduct demonstrated repudiation on multiple grounds. Mr Zhou's email in which he admitted 'oversight' in arranging the plaintiff's work arrangements, was an acknowledgment that no proper arrangements were in place following the handover demanded. The defendant's failure to respond to the plaintiff's subsequent communications, despite express notice that silence would be treated as termination, constituted a refusal to perform the contractual obligations. On this premise, the plaintiff succeeded, on the balance of probabilities, in her claim for breach of contract against the defendant (see paras 40 & 50).

(7) The claim for liquidated damages in the sum of RM1,106,129.03 failed as it is calculated on the basis of the original five-year contract rather than the contract actually governing the parties' relationship. Paragraph 8.1 of the statement of agreed facts acknowledged the plaintiff's entitlement to the unexpired term of the fixed-term contract of service, that was between 6 August 2022 to 31 October 2022. This period corresponded to the second contract's term, not the original contract. In this respect, the plaintiff was bound by this admission notwithstanding her attempt to rely on the longer term of the original contract (see para 44).

(8) Clause 9.1 provided for a RM30,000 per month for the unexpired term as agreed liquidated damages. Based on the agreed unexpired term of 6 August 2022 to 31 October 2022 constituting approximately 2.8 months, the correct calculation was therefore RM30,000 x 2.8 = RM84,000. The plaintiff's alternative claim for general damages of RM1,375,474.83 as flawed because it was calculated on the original five-year contract rather than the second contract. The presence of an express liquidated damages clause barred any claim for additional general damages in respect of the same breach. However, it did not affect accrued pre-termination contractual entitlements which remained enforceable as specific contractual debts independent of the provision for liquidated damages (see paras 45–46).

(9) Under ss 101 and 103 of the Evidence Act 1950, the burden of proof lay on the party asserting the facts. While the plaintiff had established the general existence of an incentive scheme and her past entitlement to such payments, the plaintiff had failed to prove entitlement to incentives for the purported four specific projects. The absence of verification emails coupled with the plaintiff's admission that such verification was never provided rendered this part of the claim unsubstantiated (see para 49).

[Bahasa Malaysia summary

Plaintif telah memulakan kerjayanya dengan operasi Haidilao Hot Pot di China pada tahun 2015 di bawah penggajian Haihongda (Beijing) Catering Management Co Ltd. Pada Ogos 2020, beliau telah dipindahkan ke Malaysia

di bawah penggajian pihak defendan. Pihak-pihak telah memasuki suatu kontrak perkhidmatan bertempoh tetap ('kontrak tersebut') di mana plaintif telah dilantik sebagai Pengurus Perniagaan — Asia Pasifik untuk tempoh lima tahun. Gaji bulanan plaintif adalah sebanyak RM30,000. Kontrak tersebut mengandungi suatu klausa ganti rugi tertentu dan ditetapkan yang dipersetujui, yang mewajibkan pembayaran sebanyak RM30,000 sebulan bagi baki tempoh kontrak sekiranya ditamatkan oleh mana-mana pihak dengan notis satu bulan. Pada sekitar awal April 2022, Pengurus Wilayah defendan, iaitu Encik Zhou Shaohua ('Encik Zhou'), telah datang kepada plaintif dan menuntut supaya plaintif serta-merta melepaskan jawatan pengurusannya. Beliau telah mengarahkan plaintif supaya tidak melapor diri bekerja pada keesokan harinya sementara menunggu pengaturan kerja baharu. Pada keesokan harinya, plaintif telah menyempurnakan proses penyerahan tugas, menandatangani borang penyerahan dan menyerahkannya kepada pengurus cawangan pengganti, iaitu Puan Zhang Qingwang. Pada Julai 2022, plaintif telah mendapati bahawa defendan telah berhenti membayar gajinya secara penuh bagi bulan Jun dan Julai 2022. Justeru itu, plaintif telah menghantar emel kepada Encik Zhou untuk mendapatkan penjelasan mengenai pengaturan kerjanya. Pada hari yang sama, Encik Zhou telah membalas dengan memohon maaf serta mengakui adanya kecuaian dalam mengatur penempatan kerja plaintif. Encik Zhou kemudiannya menawarkan plaintif suatu jawatan sebagai pembantu junior, namun tawaran tersebut telah ditolak oleh plaintif melalui emel. Setelah tidak menerima sebarang maklum balas selanjutnya, plaintif menghantar emel susulan menuntut arahan jelas serta memberikan notis nyata bahawa tindakan defendan tersebut telah menamatkan kontrak. Memandangkan defendan tidak memberi sebarang respons, plaintif memulakan tindakan ini dengan menuntut ganti rugi substantif atas dakwaan bahawa defendan telah melakukan pelanggaran penolakan terhadap kontrak perkhidmatan bertempoh tetap, atas alasan bahawa plaintif berhak menuntut baki tempoh kontrak tersebut. Defendan, sebaliknya, menafikan sebarang pelanggaran dan berhujah bahawa plaintif telah meninggalkan pekerjaan secara sukarela. Semasa prosiding, defendan cuba bergantung pada tiga dokumen yang diklasifikasikan sebagai Bahagian C, iaitu: (a) suatu kontrak bertempoh tetap kedua bagi tempoh satu tahun; (b) suatu nota janji; dan (c) suatu notis pemindahan. Defendan telah mengemukakan suatu sijil di bawah s 90A Akta Keterangan 1950 ('AK') melalui seorang individu bernama Encik Wong Jia Neng ('Encik Wong'), iaitu penasihat undang-undang kepada syarikat induk defendan di Singapura, dalam percubaan untuk menukar dan mengklasifikasikan dokumen-dokumen tersebut daripada Bahagian C kepada Bahagian B. Defendan selanjutnya berhujah bahawa tindakan ini merupakan suatu penyalahgunaan proses, dengan alasan bahawa tuntutan plaintif pada hakikatnya adalah suatu tuntutan pemberhentian secara konstruktif yang terletak di bawah bidang kuasa eksklusif Mahkamah Perusahaan di bawah s 20(1) Akta Perhubungan Perusahaan 1967, dengan bergantung terutamanya pada keputusan

Mahkamah Rayuan dalam kes *7-Eleven Malaysia Sdn Bhd v Ashvine Hari Krishnan* [2023] 3 MLJ 469.

Diputuskan, membenarkan tuntutan plaintif dengan kos:

(1) Kebergantungan defendan terhadap kes *7-Eleven Malaysia* adalah salah arah. Mahkamah dalam *7-Eleven Malaysia* telah memperjelaskan bahawa tuntutan berkaitan penggajian boleh dikekalkan di mahkamah sivil, berbeza daripada Mahkamah Perusahaan: (a) jika tuntutan melibatkan hak kontraktual semata-mata yang timbul daripada terma nyata kontrak pekerjaan; (b) jika tuntutan berkaitan hak kontraktual yang akan wujud tanpa mengira pemberhentian; (c) jika tuntutan bertujuan menguatkuasakan hak kontrak dan bukan pampasan atas kehilangan pekerjaan; dan (d) jika remedi yang dituntut bukan pampasan atas kehilangan pekerjaan tetapi hak yang telah atau akan terakru di bawah kontrak penggajian. Dalam kes semasa, plaintif menuntut hak-hak kontraktual khusus termasuk ganti rugi tertentu dan ditetapkan di bawah peruntukan nyata kontrak dan bukannya pampasan atas pemberhentian salah. Oleh itu, ia adalah jelas bahawa tuntutan semasa berada dalam ruang lingkup prinsip tersebut kerana ia menuntut ganti rugi kontraktual dan bukan pampasan pemberhentian (lihat perenggan 16 & 18).

(2) Kontrak pekerjaan merupakan dokumen berproses kata yang menggambarkan input taipan dan bukan output pemprosesan komputer. Oleh itu, ia berada di luar skop s 90A AK. Walaupun sekiranya dokumen-dokumen yang dipertikaikan tersebut layak sebagai dokumen terjana komputer, kuasa Encik Wong untuk menandatangani sijil tersebut adalah amat meragukan. Section 90A(2) AK memperuntukkan bahawa sijil hendaklah ditandatangani oleh seseorang yang bertanggungjawab mengurus operasi komputer atau aktiviti bagi tujuan komputer tersebut digunakan. Encik Wong adalah pekerja Singapore Super Hi Dining Pte Ltd, iaitu syarikat induk defendan, dan bukan pekerja defendan sendiri. Ini menimbulkan keraguan mengenai kuasanya untuk mengesahkan dokumen yang dikatakan dihasilkan oleh sistem komputer defendan. Keperluan statutori tersebut mewajibkan tanggungjawab terhadap komputer khusus yang digunakan oleh pihak yang mengemukakan dokumen (see perenggan 23–24).

(3) Seksyen 90A(6) AK tidak boleh berfungsi sebagai mekanisme bukti alternatif untuk dokumen di bawah s 90A(1) AK. Ia hanya beroperasi sebagai peruntukan pengandaian bagi dokumen di luar penggunaan lazim komputer. Penyatuan defendan antara peruntukan-peruntukan tersebut adalah salah arah. Seksyen 90C AK dengan jelas memperuntukkan bahawa s 90A dan 90B mengatasi semua peruntukan lain dalam AK, menjadikan s 90A satu-satunya pintu masuk eksklusif

untuk kemasukan dokumen yang dihasilkan komputer. Maka, dokumen yang dipertikaikan kekal tidak boleh diterima masuk dan kekal sebagai Bahagian C (lihat perenggan 26–27).

(4) Defendan cuba bergantung pada suatu nota janji, namun fakta berkaitannya tidak diplidkan dalam pembelaan. Ia adalah prinsip asas bahawa mahkamah tidak berhak memutuskan sesuatu kes berdasarkan perkara yang tidak diplidkan, dan perbicaraan hendaklah terhad kepada pliding. Implikasinya, pihak-pihak dihalang daripada mengemukakan keterangan mengenai fakta yang tidak diplidkan semasa perbicaraan. Oleh itu, nota janji tersebut hendaklah dikecualikan daripada pertimbangan tanpa perlu menilai kesahihannya kerana ia mencerminkan kegagalan prosedur oleh defendan (lihat perenggan 28–29).

(5) Kontrak pekerjaan adalah diperlukan untuk permohonan pas pekerjaan. Kronologi adalah jelas. Kontrak asal ditandatangani pada 1 Ogos 2020 dengan kelulusan pas pekerjaan diberikan pada 14 Ogos 2020. Kontrak kedua yang dipertikaikan bertarikh 9 Ogos 2021 dengan kelulusan pas pekerjaan pada 20 Ogos 2021. Walaupun dokumen-dokumen tersebut tidak boleh diterima masuk di bawah s 90A AK kerana ketidakpatuhan, kontrak bertempoh tetap kedua adalah sah. Dapatan ini berasaskan pengakuan mengikat dalam kenyataan fakta dipersetujui serta keperluan perniagaan yang timbul daripada syarat permohonan pas pekerjaan (lihat perenggan 33 & 36).

(6) Tingkah laku defendan menunjukkan pelanggaran penolakan atas pelbagai asas. emel Encik Zhou yang mengakui 'kecuaian' dalam mengatur penempatan kerja plaintif merupakan pengakuan bahawa tiada pengaturan kerja yang sewajarnya disediakan selepas penyerahan tugas yang dituntut. Kegagalan defendan untuk memberi respons kepada komunikasi plaintif, meskipun notis jelas bahawa kegagalan membalas akan ditafsirkan sebagai penamatan kontrak, telah membentuk suatu keengganan untuk melaksanakan obligasi kontraktual. Dengan itu, plaintif berjaya atas imbangan kebarangkalian dalam tuntutannya terhadap defendan bagi pelanggaran kontrak (lihat perenggan 40 & 50)

(7) Tuntutan ganti rugi tertentu dan ditetapkan sebanyak RM1,106,129.03 adalah gagal kerana ia dikira berdasarkan kontrak asal lima tahun, dan bukan kontrak yang sebenar mengawal hubungan pihak-pihak. Perenggan 8.1 kenyataan fakta dipersetujui mengakui hak plaintif terhadap baki tempoh kontrak bertempoh tetap tersebut, iaitu antara 6 Ogos 2022 hingga 31 Oktober 2022. Tempoh ini berpadanan dengan kontrak kedua, bukan kontrak asal. Dalam hal ini, plaintif terikat dengan pengakuan tersebut meskipun beliau cuba bergantung pada tempoh lebih panjang di bawah kontrak asal (lihat perenggan 44).

(8) Klausa 9.1 memperuntukkan pembayaran RM30,000 sebulan bagi baki tempoh kontrak sebagai ganti rugi tertentu dan ditetapkan yang dipersetujui. Berdasarkan baki tempoh yang dipersetujui iaitu 6 Ogos 2022 hingga 31 Oktober 2022, lebih kurang 2.8 bulan, pengiraan yang betul ialah RM30,000 [c326]ndash; 2.8 = RM84,000. Tuntutan alternatif plaintif bagi ganti rugi am sebanyak RM1,375,474.83 adalah cacat kerana ia dikira berdasarkan kontrak asal lima tahun berbanding kontrak kedua. Kehadiran klausa ganti rugi berjumlah tertentu yang nyata menghalang apa-apa tuntutan ganti rugi am tambahan bagi pelanggaran yang sama. Walau bagaimanapun, ia tidak menjejaskan hak kontraktual yang telah terakru sebelum penamatan, yang kekal boleh dikuatkuasakan sebagai hutang kontraktual khusus yang berasingan dengan ganti rugi tertentu dan ditetapkan (lihat perenggan 45–46).

(9) Di bawah ss 101 dan 103 AK, beban pembuktian terletak pada pihak yang menyatakan fakta. Walaupun plaintif berjaya membuktikan kewujudan umum suatu skim insentif dan kelayakannya pada masa lalu terhadap bayaran tersebut, plaintif telah gagal membuktikan kelayakan kepada insentif bagi empat projek tertentu yang didakwa. Ketiadaan emel pengesahan, disertai dengan pengakuan plaintif bahawa pengesahan tersebut tidak pernah diberikan, menjadikan tuntutan tersebut tidak dapat dipertahankan (lihat perenggan 49).]

Cases referred to

7-Eleven Malaysia Sdn Bhd v Ashvine Hari Krishnan [2023] 3 MLJ 469; [2023] 4 CLJ 895; [2023] 4 MLRA 252, CA (distd)

Ahmad Najib bin Aris v PP [2009] 2 MLJ 613; [2009] 2 CLJ 800; [2009] 1 MLRA 58, FC (refd)

Approfit Sdn Bhd v Kent Sing Construction Sdn Bhd & Ors [2001] MLJU 619; [2001] CLJU 3; [2001] 6 MLRH 749, HC (refd)

Aseambankers Malaysia Bhd & Ors v Shencourt Sdn Bhd & Anor [2014] 4 MLJ 619; [2014] 2 CLJ 773; [2014] 4 MLRA 104, CA (refd)

CH Choo & Sons Sdn Bhd v Wong Nyuk Shing @ Wong Teck Tsin [2010] 9 MLJ 176; [2010] CLJU 167; [2010] 4 MLRH 857, HC (refd)

First Count Sdn Bhd v Wang Yew Logging & Plantation Sdn Bhd [2013] 4 MLJ 693; [2013] 4 MLRA 457; [2013] 5 AMR 305, CA (refd)

Gnanasegaran a/l Pararajasingam v PP [1997] 3 MLJ 1; [1997] 4 CLJ 6; [1995] 2 MLRA 555; [1997] 3 AMR 2841, CA (refd)

Hanafi bin Mat Hassan v PP [2006] 4 MLJ 134; [2006] 3 CLJ 269; [2006] 1 MLRA 706; [2006] 4 AMR 281, CA (refd)

Jaafar bin Shaari & Anor (suing as administrators of the estate of Shofiah bte Ahmad, deceased) v Tan Lip Eng & Anor [1997] 3 MLJ 693; [1997] 4 CLJ 509; [1997] 1 MLRA 605; [1997] 4 AMR 374, SC (refd)

Ng Kim Fong v Menang Corporation (M) Berhad [2020] MLJU 644; [2020] CLJU 1263; [2020] 3 MELR 38; [2020] 5 MLRA 350, CA (refd)

Teoh Kiang Hong v Theow Say Kow @ Teoh Kiang Seng, Henry [2025] 1 MLJ 813; [2025] 2 CLJ 683; [2025] 2 MLRA 504; [2025] 2 AMR 381, FC (refd)

The Carbon Co Sdn Bhd & Anor v Ng Lee Hoon (conducting under 'Forest Wood Flooring') [2017] 4 MLJ 791; [2017] 6 CLJ 189; [2017] 3 MLRA 650, CA (refd)

Yinson Corporation Sdn Bhd v Perfect Mix Portfolio Sdn Bhd & Ors [2021] MLJU 184; [2021] CLJU 212; [2021] 4 MLRH 21, HC (refd)

Legislation referred to

Contracts Act 1950 s 40
Evidence Act 1950 ss 90A, 90A(1), (2), (4), (6), 90B, 90C, 101, 103
Industrial Relations Act 1967 s 20(1), (4)

Daryl Kong Kai Xuan (with Goh Sue Ping) (Heaw Eng & Goh) for the plaintiff.
Shariffullah bin Abdul Majeed (with Arissa Ahrom) (Lee Hishammuddin Allen & Gledhill) for the defendant.

Ahmad Shahrir J:

INTRODUCTION

[1] This is a claim concerning a contractual dispute arising from an employment relationship between the plaintiff who was engaged as business manager and a company operating a chain of hotpot restaurants. The plaintiff claims substantial damages for what she characterises as the defendant's repudiatory breach of a fixed-term contract of service. The plaintiff alleges that the defendant, through its conduct, required her to relinquish her managerial position without making proper arrangements for her continued employment.

[2] The defendant denies any breach contending instead that the plaintiff abandoned her employment. It also raises preliminary objections on the proper forum for adjudication.

BRIEF BACKGROUND OF FACTS

[3] The plaintiff commenced her career with Haidilao Hot Pot operations in China in 2015 under the employment of Haihongda (Beijing) Catering Management Co Ltd. In August 2020, she was reassigned to Malaysia under the defendant's employment.

[4] On 1 August 2020, the parties executed a fixed-term contract of service whereby the plaintiff was appointed as the Business Manager — Asia Pacific for a term of five years from 1 September 2020 to 31 August 2025. The plaintiffs' monthly salary was RM30,000. The contract contained an agreed liquidated

damages clause requiring payment of RM30,000 per month for the unexpired term upon termination by either party with one month's notice.

[5] Sometime in early April 2022, the defendant's Regional Manager, Mr Zhou Shaohua, approached the plaintiff at her workplace and demanded that she immediately relinquish her managerial position. He instructed her not to report for work the following day pending new work arrangements.

[6] On the following day, the plaintiff completed the handover process, signed a handover form and surrendered it to the replacement branch manager, Ms Zhang Qingwang. The plaintiff then took annual and medical leave during April and May 2022 which included self-quarantine due to COVID-19.

[7] In July 2022, the plaintiff discovered that the defendant had ceased paying her full salary for June and July 2022. On 24 July 2022, the plaintiff emailed Mr Zhou seeking clarification on her work arrangements and raising concern that someone had contacted her regarding the removal of her employment data from the defendant's database.

[8] On the same day, Mr Zhou replied, apologising and admitting to an oversight in arranging her work placement. He explained that from June 2022, Mr Wang had assumed responsibility for the Singapore and Malaysia regions but that he had failed to liaise with Mr Wang on the plaintiff's situation.

[9] On 26 July 2022, Mr Zhou offered the plaintiff a position as junior assistant to Mr Wang. The plaintiff rejected the offer by an email dated 28 July 2022. When she received no reply, the plaintiff sent further emails on 1 August 2022 demanding clear instructions by 4 August 2022 and on 6 August 2022 giving express notice that the defendant's conduct had terminated the contract. The defendant did not respond.

[10] During the proceedings, the defendant sought to rely on three documents classified as Part C. The plaintiff disputed the authenticity of these documents, alleging forgery. The plaintiff denied ever signing these documents. These documents are as follows:

(a) a purported second fixed-term contract dated 9 August 2021 for one year from 1 November 2021 to 31 October 2022;

(b) a promissory note dated 18 February 2022; and

(c) a transfer notice dated 4 April 2022.

[11] The defendant produced a certificate under s 90A of the Evidence Act 1950 through Mr Wong Jia Neng, the legal counsel of the defendant's

parent company in Singapore, in an attempt to convert and reclassify these documents from Part C to Part B.

[12] The plaintiff engaged the Department of Chemistry Malaysia to conduct a forensic examination of certain documents but omitted the impugned second contract from that examination.

[13] Pursuant to para 8.1 of the statement of agreed facts, it was agreed that if any entitlement is established, the plaintiff is entitled to claim the unexpired term of the fixed-term contract of service, that is between 6 August 2022 to 31 October 2022.

ANALYSIS AND FINDINGS

Nature of plaintiff's claim

[14] The defendant contends that this action amounts to an abuse of process. It argues that the plaintiff's claim is, in substance, one for constructive dismissal falling within the exclusive jurisdiction of the Industrial Court under s 20(1) of the Industrial Relations Act 1967. The defendant relies primarily on the Court of Appeal decision in *7-Eleven Malaysia Sdn Bhd v Ashvine Hari Krishnan* [2023] 3 MLJ 469; [2023] 4 CLJ 895; [2023] 4 MLRA 252 (CA).

[15] In the statement of defence, the defendant did not plead abuse of process as part of its defence. In *Aseambankers Malaysia Bhd & Ors v Shencourt Sdn Bhd & Anor* [2014] 4 MLJ 619; [2014] 2 CLJ 773; [2014] 4 MLRA 104 (CA), the Court of Appeal held that parties are bound by their pleadings and that the court cannot decide a matter not pleaded. The court stressed that it is a fundamental rule of natural justice that the opposing party be informed of any adverse issue. The defendant's attempt to introduce this objection only in post-trial submissions, after more than two years of proceedings, constitutes both a pleading deficiency and an inordinate delay amounting to a waiver of the objection.

[16] With respect, the defendant's reliance on *7-Eleven Malaysia* is misplaced. It may be distilled that the Court of Appeal in *7-Eleven Malaysia* clarifies that employment related claims may be maintained before the civil courts as distinguished from the Industrial Court:

(a) if the claim consists of purely contractual entitlement arising from express terms of the contract of employment;

(b) if the claim relates to a contractual entitlement which would have crystallised regardless of the dismissal;

(c) if the claim seeks to enforce contractual rights and not compensation for loss of employment; and

(d) the relief sought is not compensation for loss of employment but for rights that accrued or would have accrued under the contract of employment.

[17] In *Ng Kim Fong v Menang Corporation (M) Berhad* [2020] MLJU 644; [2020] CLJU 1263; [2020] 3 MELR 38; [2020] 5 MLRA 350 (CA), the Court of Appeal held that civil courts retain jurisdiction over contractual claims in employment contexts, provided the claim is for contractual entitlement and not compensation for loss of employment. The court affirmed that s 20(4) of the Industrial Relations Act does not preclude civil courts from awarding contractual entitlements which the parties are entitled to receive.

[18] In the present case, the plaintiff seeks specific contractual entitlements including liquidated damages under an express provision of the contract and not compensation for wrongful dismissal. As such, it is clear to my mind that the present claim falls squarely within this principle as it seeks contractual damages rather than compensation for dismissal.

Admissibility of disputed documents under s 90A of the Evidence Act 1950

[19] The defendant relies on a certificate issued under s 90A of the Evidence Act 1950 by Mr Wong Jia Neng to admit three disputed documents. The documents are as follows:

(a) a purported second fixed-term contract dated 9 August 2021;

(b) a promissory note dated 18 February 2022; and

(c) a transfer notice dated 4 April 2022.

[20] In *Ahmad Najib bin Aris v Public Prosecutor* [2009] 2 MLJ 613; [2009] 2 CLJ 800; [2009] 1 MLRA 58 (FC), the Federal Court ruled that the seven subsections of s 90A must be read as a single, integrated provision governing the admissibility of documents produced by computers. It established that such documents may be proved in only the following two ways:

(a) first, by a certificate under s 90A(2) signed by a person responsible for the management of the computer's operation (which is permissive, not mandatory); and

(b) second, by oral evidence establishing equivalent facts, namely, that the document was produced by a computer in the ordinary course of use together with proof under s 90A(4) that the computer was operating properly.

[21] The phrase 'a document produced by a computer' in s 90A(1) has been judicially interpreted to distinguish between genuine computer output from mere data reproduction. In *Approfit Sdn Bhd v Kent Sing Construction Sdn Bhd & Ors* [2001] MLJU 619; [2001] CLJU 3; [2001] 6 MLRH 749, His Lordship the Honourable Richard Malanjum J (later CJ) cautioned that documents such as invoices, which can also be printed by other means, should not automatically fall within the ambit of s 90A of the Evidence Act 1950.

[22] The principle was further developed by Her Ladyship the Honourable Evrol Mariette Peters JC (now JCA) in *Yinson Corporation Sdn Bhd v Perfect Mix Portfolio Sdn Bhd & Ors* [2021] MLJU 184; [2021] CLJU 212; [2021] 4 MLRH 21, where the court held that s 90A applies only to output generated through computational, algorithmic or analytical processing by specific software and not to simple reproduction of a typed input.

[23] In the context of the present case, employment contracts are word-processed documents representing typed input rather than processed computational output. They therefore fall outside the scope of s 90A of the Evidence Act 1950.

[24] Even if the disputed documents qualified as computer-generated documents, Mr Wong's authority to execute the certificate is highly questionable. Section 90A(2) of the Evidence Act 1950 requires that the certificate be executed by a person responsible for the management of the computer's operation or conduct of activities for which the computer was used. Mr Wong is employed by Singapore Super Hi Dining Pte Ltd, the defendant's parent company, and not by the defendant itself. This raises concerns regarding his authority to certify documents produced by the defendant's computer systems. The statutory requirement demands responsibility over the specific computer used by the party tendering the documents.

[25] In *Ahmad Najib bin Aris*, the Federal Court clarified the scope of s 90A(6) by referring to *Gnanasegaran a/l Pararajasingam v Public Prosecutor* [1997] 3 MLJ 1; [1997] 4 CLJ 6; [1995] 2 MLRA 555; [1997] 3 AMR 2841 (CA) and endorsing *Hanafi bin Mat Hassan v Public Prosecutor* [2006] 4 MLJ 134; [2006] 3 CLJ 269; [2006] 1 MLRA 706; [2006] 4 AMR 281 (CA). The apex court ruled that s 90A(1) applies to documents actually produced by a computer in its ordinary course of use while s 90A(6) applies to documents not so produced but deemed to be so by legal fiction.

[26] The position of the law is thus clear, that s 90A(6) of the Evidence Act 1950 cannot serve as an alternative proof mechanism for documents under s 90A(1). It operates only as a deeming provision for documents outside the ordinary course of computer use.

[27] Respectfully, the defendant's conflation of these provisions is misguided. Section 90C of the Evidence Act 1950 expressly provides that ss 90A and 90B prevail over all other provisions of the Evidence Act 1950 making s 90A the exclusive gateway for admitting documents produced by computers. Accordingly, I find that the disputed documents must remain inadmissible and retain their Part C status.

The promissory note — Deficiency in pleadings

[28] The defendant seeks to rely on a promissory note dated 18 February 2022 but the facts relating to this were not pleaded in the defence. It is trite that the court is not entitled to decide a case on a matter which is not pleaded and that the trial must be confined to the pleadings. It follows that parties are barred from adducing evidence of unpleaded facts during trial (see: *The Carbon Co Sdn Bhd & Anor v Ng Lee Hoon (conducting under 'Forest Wood Flooring')* [2017] 4 MLJ 791; [2017] 6 CLJ 189; [2017] 3 MLRA 650 (CA)).

[29] As a consequence, the promissory note is therefore to be excluded from consideration without the need to examine its authenticity as it reflects a clear procedural failure by the defendant.

Validity of the second fixed-term contract

[30] The defendant contends that the second fixed-term contract dated 9 August 2021 replaced the original contract. However, the plaintiff denies executing this document and alleges that her signature was forged.

[31] The most significant evidence supporting the validity of the second contract is para 8.1 of the statement of agreed facts which records the plaintiffs' entitlement to the unexpired term of the fixed-term contract of service, that is between 6 August 2022 to 31 October 2022. This period matches the term of the second contract (1 November 2021 to 31 October 2022) rather than the original contract (1 September 2020 to 31 August 2025).

[32] In *CH Choo & Sons Sdn Bhd v Wong Nyuk Shing @ Wong Teck Tsin* [2010] 9 MLJ 176; [2010] CLJU 167; [2010] 4 MLRH 857, the High Court ruled that parties cannot resile from positions taken in a statement of agreed facts which constitutes an irrevocable admission binding on the parties. This admission, therefore, acknowledges the existence and validity of the second contract notwithstanding the plaintiff's subsequent denial in her witness statement.

[33] The business necessity for executing the second contract further supports its authenticity. The evidence shows that employment contracts are

required for employment pass applications. The chronology is compelling. The original contract was executed on 1 August 2020 with employment pass approval granted on 14 August 2020. The disputed second contract was dated 9 August 2021 with employment pass approval granted on 20 August 2021. The plaintiff admitted during cross-examination that an employment contract must be in place before applying for an employment pass.

[34] The plaintiff's denial is weakened by her deliberate omission of the disputed second contract from the forensic examination conducted by the Department of Chemistry Malaysia despite submitting other documents for analysis. In *Jaafar bin Shaari & Anor (suing as administrators of the estate of Shofiah bte Ahmad, deceased) v Tan Lip Eng & Anor* [1997] 3 MLJ 693; [1997] 4 CLJ 509; [1997] 1 MLRA 605; [1997] 4 AMR 3744 (SC), the then Supreme Court held that where a party elects not to produce available evidence, an adverse inference may be drawn.

[35] In *Teoh Kiang Hong v Theow Say Kow @ Teoh Kiang Seng, Henry* [2025] 1 MLJ 813; [2025] 2 CLJ 683; [2025] 2 MLRA 504; [2025] 2 AMR 381 (FC), the Federal Court remarked at para [89] that in allegations of forgery, the burden of proof lies with the one who asserts, not the one who denies. In the present case, the plaintiff has failed to discharge this burden.

[36] While the disputed documents remain inadmissible under s 90A of the Evidence Act 1950 for non-compliance, this court finds that the second fixed-term contract was valid. This finding rests primarily on the binding admission in the statement of agreed facts reinforced by the business necessity arising from employment pass requirements.

Repudiatory breach by the defendant

[37] The plaintiff adduced forensic evidence through a chemist's report confirming that the signatures on the handover form and transfer notice were derived from a common source. The defendant did not challenge this expert evidence or the plaintiff's testimony on signature copying.

[38] The plaintiff's payslips from April to August 2022 consistently recorded her position as Branch Manager. This fact materially contradicts any claim of the plaintiff's effective redesignation. The July 2022 email correspondence contains no reference to any agreed transfer, further supporting the conclusion that no such agreement existed.

[39] The evidence establishes that the defendant has committed a repudiatory breach through its conduct. The legal test for repudiation is set out in s 40 of the Contracts Act 1950. In *First Count Sdn Bhd v Wang Yew Logging*

& Plantation Sdn Bhd [2013] 4 MLJ 693; [2013] 4 MLRA 457; [2013] 5 AMR 305 (CA), the Court of Appeal held that where a party has refused to perform or disabled himself from performing his promise in its entirety, the innocent party may elect to terminate the contract and claim damages.

[40] The defendant's conduct demonstrates repudiation on multiple grounds. Mr Zhou's email dated 24 July 2022, in which he admitted 'oversight' in arranging the plaintiff's work arrangements, is an acknowledgment that no proper arrangements were in place following the handover demanded on 3 April 2022. It is the finding of this court that the defendant's failure to respond to the plaintiffs' subsequent communications, despite express notice that silence would be treated as termination, constitutes a refusal to perform the contractual obligations.

[41] I further find that the defendant's attempt to justify its conduct on the basis of the plaintiffs alleged poor performance is without merit. The defendant's own policy requires a 'C' or 'D' rating for six times or more in a year before a restaurant manager can be eliminated. The evidence shows that the plaintiff received 'C' ratings for only four months in 2021 and three months in 2022, totalling seven months across two years and not six or more within a single year as the policy demands. The defendant therefore failed to comply with its own policy.

[42] The defendant's payroll records contradict its claim that the plaintiff accepted a redesignation. The payslips from April to August 2022 consistently recorded her position as a Branch Manager demonstrating that no effective redesignation occurred. The July 2022 email correspondence contains no reference to any prior agreement for redesignation. This further supports the conclusion that no such arrangement in fact existed.

Assessment of damages

[43] The plaintiff claims various heads of damages comprising pre-termination arrears and post-termination losses. The pre-termination salary arrears are well supported by evidence. In para 7(b) of its statement of defence, the defendant admits liability for salary shortfall from January to May 2021. This amounted to RM44,838.71. The arrears for June and July 2022 totalling RM73,281.90 are corroborated by the payslip evidence and the defendant's own admission that payments ceased during this period. The claim for one month's salary in lieu of a notice in the sum of RM30,000 is established under cl 9.1 of the contract which requires one month's notice for termination. The claim for unutilised annual leave in the sum of RM1,153.85 is supported by unchallenged testimony on the plaintiffs' leave entitlement and usage.

[44] The claim for liquidated damages in the sum of RM1,106,129.03 fails as it is calculated on the basis of the original five-year contract rather than the contract actually governing the parties' relationship. Paragraph 8.1 of the statement of agreed facts acknowledges the plaintiff's entitlement to the unexpired term of the fixed-term contract of service, that is between 6 August 2022 to 31 October 2022. This period corresponds to the second contract's term, not the original contract. In this respect, the plaintiff is bound by this admission notwithstanding her attempt to rely on the longer term of the original contract (see: *CH Choo & Sons*).

[45] Clause 9.1 provides for a RM30,000 per month for the unexpired term as agreed liquidated damages. Based on the agreed unexpired term of 6 August 2022 to 31 October 2022 constituting approximately 2.8 months, the correct calculation is therefore RM30,000 x 2.8 = RM84,000. Liquidated damages represent a pre-estimate of loss agreed between the parties and ordinarily exhaust the remedies available for the breach they address. The parties expressly agreed that this sum would constitute adequate compensation for early termination.

[46] With respect, I find the plaintiff's alternative claim for general damages of RM1,375,474.83 as flawed because it is calculated on the original five-year contract rather than the second contract. The presence of an express liquidated damages clause bars any claim for additional general damages in respect of the same breach. However, it does not affect accrued pre-termination contractual entitlements which remain enforceable as specific contractual debts independent of the provision for liquidated damages.

[47] The claim for incentives in the sum of RMB320,000 has some evidentiary basis. The plaintiff's payslips for January 2021 and May 2022 show that the defendant previously paid expansion incentives of RM249.989.55 and RM78,708 respectively. This demonstrates a pattern of direct payment and contradicts the defendant's assertion that such payments must come from Haidilao China. An email from Yang Hua dated 17 December 2018 confirms an incentive scheme of RMB80,000 for each successful submission and execution of lease agreements for new branches.

[48] However, the specific claim for four overseas expansion projects is unverified. The plaintiff testified that these projects were Darling Square Australia, Emporium Australia, Living World Indonesia and Discovery Mall Indonesia. During cross-examination, the plaintiff admitted that the company had not sent any email confirming her incentives for the four branches in question. This admission creates a fatal evidential gap. Unlike previous incentive payments which were verified through confirmation emails, no such verification exists for these purported four projects.

[49] Under ss 101 and 103 of the Evidence Act 1950, the burden of proof lies on the party asserting the facts. While the plaintiff has established the general existence of an incentive scheme and her past entitlement to such payments, the plaintiff has failed to prove entitlement to incentives for the purported four specific projects. The absence of verification emails coupled with the plaintiff's admission that such verification was never provided renders this part of the claim unsubstantiated.

CONCLUSION

[50] On the premise of these reasons, this court finds that the plaintiff succeeded, on the balance of probabilities, in her claim for breach of contract against the defendant. As such, this court hereby allows the plaintiff's claim as follows:

(a) arrears of salary for the periods of January to May 2021 and June to July 2022 in the sum of RM118,120.61. This includes the defendant's admitted liability of RM44,838.71 for the earlier period and the evidenced shortfall of RM73,281.90 for the latter period;

(b) one month's salary in lieu of notice in the sum of RM30,000 pursuant to cl 9.1 of the contract;

(c) payment for one day of unutilised annual leave in the sum of RM1,153.85;

(d) liquidated damages for the unexpired term of the contract in the sum of RM84,000 calculated at RM30,000 per month for 2.8 months from 6 August 2022 to 31 October 2022 as established by the statement of agreed facts; and

(e) EPF contributions for the months of January to May 2021, June 2022, July 2022 and 1 August 2022 to 4 August 2022 as specifically claimed by the plaintiff, and

(f) judgment interest at the rate of 5%pa from the date of judgment to the date of full realisation.

[51] Costs of RM30,000 is allowed in favour of the plaintiff.

Plaintiff's claim allowed.

Reported by K Selvaraju